

**JOINT LEGISLATIVE SUNSET  
REVIEW COMMITTEE FINDINGS AND  
RECOMMENDATIONS**

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**Review and Evaluation of the  
Board of Optometry**

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**Report to the  
Department of Consumer Affairs**

**APRIL, 1998**

# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

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# IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE BOARD OF OPTOMETRY

## ISSUE #1. Should the State's licensing of optometrists be continued?

**Recommendation:** *Both the Department and Committee staff recommended the continued licensure of optometrists.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Optometry licenses and regulates approximately 7,500 Doctors of Optometry (OD) and about 400 optometric corporations, comprising the largest contingent of OD's of all states in the U.S. Optometrists are licensed in all 50 states and the District of Columbia.

An incompetent or unethical optometrist can cause serious and permanent harm, both physically and financially, to the unsuspecting public. Many procedures performed by optometrists involve direct contact with the eye. Partial or permanent vision loss due to an optometrist's negligent acts or incompetent practice has severe and dramatic consequences, including serious and irreparable diminution of the patient's quality of life.

In addition to serious physical harm, without regulation, the unethical optometrist's fraudulent practices put the public at risk for suffering extreme financial injury. According to statistics provided by the board, the great majority of its investigations and disciplinary actions involve fraud or related allegations. Fraudulent or misleading claims by unscrupulous practitioners can cause unreasonable expectations on the part of consumers. It is only after a substantial amount of money has been paid in professional services or products that the patient is advised, or realizes, that the outcome will not be as promised or expected. Individuals least equipped to protect their own interests, like the elderly and disabled, are often the victims of these practices.

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**ISSUE #2. Should an independent Board of Optometry be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?**

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**Recommendation:** *Both the Department and Committee staff recommended that the Board of Optometry be retained as the independent state agency to regulate and license optometrists. Committee staff recommended that the sunset date of the Board be extended for four years (to July 1, 2003).*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Optometry generally functions efficiently and effectively to ensure licensees' competence and pursue egregious disciplinary cases. However, see additional discussion (below) of the need for the Board of Optometry to enhance its program efforts in the areas of consumer information, outreach, and enforcement.

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**ISSUE #3. Should the composition of the Board of Optometry be changed?**

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**Recommendation:** *This board has nine (9) members, of whom six (6) are licensed optometrists and three (3) are public members. The Department generally recommends a public member majority and an odd number of members for regulatory boards. For the Board of Optometry, the Department recommended an increase in public membership to improve balance consistent with those guidelines. Committee staff concurred with the Department, and recommended adding one more public member to the Board and removing one of the optometrist members. The composition of the Board would still be 9 members, but with five (5) optometrists and four (4) public members.*

**Vote:** *The Joint Committee did not adopt the recommendation of the Department and Committee staff by a vote of 2-3.*

**Comment:** The Department and Committee staff believe the current composition of the nine-member Board of Optometry, 6 optometrists and 3 public members, is *overbalanced toward optometrist members*. The Joint Committee may wish to consider converting one of the optometrist positions to a public member.

This recommendation is based on the belief that a regulatory board dominated by professional members (a 2-to-1 majority in this instance), may tend to place greater emphasis on issues of competence (e.g., examinations, continuing education, expanded scope of practice) and correspondingly less emphasis and resources on consumer education/information, and enforcement. And, while it generally functions efficiently, the Board of Optometry may be a case in point.

In recent years, the Board has revamped and improved its licensing examination, instituted new continuing education requirements, and implemented the TPA law, which expanded optometrists' scope of professional activities. All of these achievements enhance the

professional stature, competence and level of service that OD's provide to patients, and all are noteworthy accomplishments. However, there may not have been equally noteworthy initiatives in the areas of consumer information or enforcement.

In the area of *consumer information*, the Board's consumer survey (conducted as part of the sunset review process) indicated "an overall dissatisfaction with the Board's visibility to the general public," despite the fact that the same survey indicated that 72% of respondents were satisfied with the board's overall service/effectiveness. It appears that the board needs to be more assertive in making its existence known and presence felt among *consumers of optometrists' services*.

In the area of *enforcement*, the Board's emphasis on competency issues seems to overlook the fact that the majority of its complaints and investigations, and most of its disciplinary actions, are only marginally related to competence. Board statistics for 1996/97 illustrate:

Investigations opened: Fraud, 6; Non-jurisdictional/ unlicensed (including advertising), 5; Personal Misconduct, 5; Health and Safety, 0; Unprofessional Conduct, 0; Incompetence/Negligence, 2.

Disciplinary actions: Of 12 completed in 1996/97, Health and Safety accounted for 0; Incompetence/Negligence, only 2.

There is no doubt that the practice of optometry involves serious health and economic issues for consumers, and the Board has achieved disciplinary sanctions in a few egregious cases. However, this analysis suggests that enforcement cases are rarely related to issues of licensee competence, and a *profession-dominated board may tend to overemphasize competence at the expense of consumer outreach and enforcement*. Accordingly, the Legislature may wish to consider altering the board composition to provide better balance among the Board of Optometry programs.

It should also be noted that this movement *away from dominant super-majorities* of professional members and *toward closer parity between public and professional members* is consistent with both the Joint Committee and Department of Consumer Affairs recommendations regarding other boards that have undergone sunset review.